IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3117 OF 2006

Mangesh B.Shelar & Ors. .. Petitioners.

V/s.

Divisional Joint Registrar & Ors. .. Respondents.

Shri.Premlal i/b.Sreeji & Lal for the petitioners.

Ms.Mamata Sadh, A.G.P. for the State.

CORAM : S.C.DHARMADHIKARI, J

DATE : 15TH JANUARY, 2007.

P.C.:

. Heard Shri.Premlal appearing for the petitioners and the learned A.G.P. for State.

. In a proceeding which was initiated u/s.78(1) of the Maharashtra Co-Operative Societies Act, 1960 ("MCS" Act for short), the second respondent went in appeal to challenge the order dated 1st August, 2006. By this order, the committee was superseded and an Administrator was appointed by the Dy.Registrar.

. The grievance of the second respondent-Samarth Co-Operative Housing Society is that the order u/s.78(1) could not have been passed in the facts and circumstances of the case because the show cause notice refers to two orders passed on 10th April, 2006 and on 11th May, 2006 purporting to be one u/s.89 of the "MCS" Act. Before the powers u/s.78(1) could have been exercised by the authority, the mandatory provisions therein ought to have been complied and in any event, the alleged default is not such as would necessitate removal of the committee and appointment of an administrator to administer and manage the affairs of the Co-Operative Housing Society in question.

. The petitioners are the original complainants/intervenors. Their grievance is that in the appeal filed by the second respondent-society, the Divisional Joint Registrar has not permitted any intervention and without passing any orders on their intervention application, proceeded to quash the order impugned and challenged before him. He submits that the intervenors were supporting the orders dated 31st July/ 1st August, 2006.

. From a perusal of the order passed on 1st August, 2006, it appears that the same alleges violation of the orders passed on 10th April, 2006 and 11th May, 2006 and breach of directions thereunder. The orders referred to above are traceable to Section 89A of the "MCS" Act, which reads thus:-

> **"89A.:- Power to inspect working of society** - (1) It shall be competent for the Registrar to inspect or cause to be inspected the working of any society to ensure that :-
>
> (a) the provisions of the Act, rules and bye-laws of the society are being properly followed by the society;
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> (b) the records and books of accounts are kept in proper forms;
>
> (c) the business of the society is being run on sound business principles;
>
> (d) the society is following the co-operative principles and the directives or directions given by the State Government in accordance with the

provisions of this Act and the rules made thereunder."

. This, being the basis for issuance of show cause notice u/s.78(1) and even the mandatory provisions contemplated thereby not having been complied with, the Appellate Authority stepped in and has passed the impugned order.

. In M.R.Bhuibhar v. Divisional Joint Registrar, Co-Operative Society, Nagpur & others reported in **1982 Mh.L.J. Pg.368,** this Court has observed that an action u/s.78 of the Maharashtra Co-operative Societies Act is a very drastic action. It harms injuriously the reputation of the person concerned and deprives him of his elected office as well as status and image in the affairs of a Society. Such an action u/s.78 is capable of causing irreparable damage. The action is extreme and a weapon intended to be used sparingly. It cannot be used for ulterior purpose and can only be used to bring erring Societies and their office bearers to book. It is well settled that before action is taken, requirement stipulated in Sec.78(1) concerning the requisite satisfaction as also consultation with the federal society is mandatory.

. In my view, the Appellate Authority was right in setting aside the order impugned before it namely the order of supersession of the committee and the appointment of an administrator. Thus, even if the petitioners had got an opportunity to intervene and make submissions, in the peculiar facts of this case, the ultimate conclusion would have been the same. The Divisional Joint Registrar was right in setting aside the order u/s.78(1) and allowing the appeal preferred by the second respondent. No prejudice is caused to the petitioners on account of the alleged refusal to intervene at the hearing before him.

. Having perused the entire materials with the assistance of Shri.Premlal, in my view, no useful purpose will be served by going into any further details. The order under challenge in this petition is not vitiated by any error apparent on the face of the record nor it can be termed as perverse. Thus, going to the root of the matter, I find that this is not a fit case for interference in the extraordinary, discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution of India. Petition is summarily dismissed.

. However, dismissal of this petition so also the impugned order does not prevent the Registrar or the Authorities under the Act to take such steps as are permissible in law including initiation of proceedings u/s.78(1) afresh if the grievance of the petitioners still subsists. Similarly, it would be open for Registrar to exercise his powers including those u/s.83 to 89 of the Maharashtra Co-Operative Societies Act, 1960 to enforce compliance of his directions to grant inspection and ensure that the Co-Operative Society in question functions in accordance with the provisions of the Act, rules and its bye-laws. Those powers can always be resorted to irrespective of the result of the present petition.

(S.C.Dharmadhikari, J.)